

LABOR MANAGEMENT AGREEMENT

Between

COUNTY OF BERNALILLO

And

**BERNALILLO COUNTY FIRE FIGHTERS
LOCAL 244
INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS**

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AGREEMENT

Entered into this 1st day of July 2004 between the County of Bernalillo, hereinafter referred to as the "County" and the Bernalillo County Fire Fighters, Local 244, International Association of Fire Fighters, as representatives of the employees in the Bernalillo County Fire Fighters Bargaining Unit, hereinafter referred to as the "Union" and effective until the 30th day of June 2005.

The parties further acknowledge that in the administration of all matters covered by this Agreement, the County and the Union are governed by existing or future laws.

In applying this Agreement, the use of the masculine gender herein, shall be construed to include the feminine gender. The use of the singular shall be construed to include the plural.

NOW THEREFORE IT IS AGREED

ARTICLE 1 PURPOSE

- 1.1 It is the purpose of this Agreement to promote and maintain harmony, cooperation and understanding among the County its employees, and the Union and its members in fulfilling their mutual and respective obligations to each other and the citizens of Bernalillo County.
- 1.2 It is the further purpose of this Agreement to provide orderly collective bargaining relations between the County and the Union and to secure the prompt and fair disposition of grievances in order to assure the efficient operation and uninterrupted service to the County.
- 1.3 The Union and the County agree that every effort will be made to administer this Agreement in accordance with the true intent establishing sound labor-management relations.
- 1.4 ARTICLE 1 is not grievable.

ARTICLE 2 RECOGNITION

- 2.1 Pursuant to the certification issued by the Bernalillo County Labor Relations Board, the County recognizes the Union as the exclusive representative for collective bargaining, as defined by Bernalillo County Code Section 2-201, et. seq. for Labor Management Relations, of all employees in the appropriate bargaining unit as determined by the Bernalillo County Labor Relations Board. The Parties agree that the Union has the sole and exclusive right to represent all such employees as their collective bargaining agent.
 - 2.1.1 Appendix A hereto is a list of all job titles that are currently in the bargaining unit as a result of the Labor Relations Board's Certification.
- 2.2 The union recognizes its responsibility to represent the interest of all employees in the bargaining unit (As listed in 2.1.1) with respect to employee rights, management rights, working conditions, employee benefits, and compensation, without discrimination and without regard to union or non union affiliation.

ARTICLE 3 MANAGEMENT RIGHTS

- 3.1 The County, in accordance with applicable statutes, rules and regulations, except as expressly limited, altered or modified by provisions of this Agreement or appendices hereto, or subsequent modification by written instrument signed by the parties which shall specifically identify and refer to the particular Article and subsection of this Agreement addressed therein, retains the exclusive right and authority to:
- 3.1.1 (a) maintain the efficiency of government operations entrusted to it by law; (b) determine the mission of County government; (c) determine the resources to be allocated to accomplish the mission and goals of the respective County Departments as units of County government; (d) determine methods, means, and personnel by which the operations of the County's Departments are to be operated and conducted; (e) determine the number of employees to be employed and the capacity of such employment at any time; (f) act in furtherance of all other duties and responsibilities imposed upon it by the Constitution, federal and state statutes, ordinances and administrative regulations; (g) determine the location and operation of its facilities; (h) insure the maintenance of uninterrupted service to the community; and, (i) take all such actions necessary to maintain such service.
- 3.1.2 (a) direct employees, establish and enforce reasonable rules and regulations governing the conduct and safety of its employees; (b) establish schedules and take such other actions necessary to carry out the functions entrusted to, or imposed upon, it and the County Departments by law; (c) hire, promote, transfer, assign, and retain employees in positions; (d) suspend, demote, dismiss and otherwise discipline employees for just cause; (e) lay-off or otherwise relieve employees from duty for lack of work or other legitimate reason; (f) determine qualifications for, and select and hire supervisory personnel; (g) determine the qualifications for, select and hire new employees; (h) determine the qualifications and select employees for promotion and transfer; (i) determine the number and arrangement of work schedules, shifts and the starting and stopping times thereof; (j) evaluate, test and provide for the examination of employees and applicants for employment to determine their fitness and suitability for duty and employment; and (k) determine and implement all policies, procedures and standards not otherwise restricted, limited or prohibited by the specific provisions of this Agreement.
- 3.2 It is understood and agreed that the functions of management listed herein are not all inclusive and the County shall retain that all such rights, powers, or authority not otherwise relinquished in this Agreement.

- 3.3 It is further understood and agreed that any provision in this Agreement meeting the criteria set out in ¶ 3.1 hereof shall supersede the affected management right.

ARTICLE 4 REPRESENTATION

- 4.1 The Union retains the exclusive right to define its organization and to manage its internal affairs and the County shall recognize those employees designated as representatives of the Union in all matters arising from the administration of this Agreement. The Union shall advise the County Manager of the names, addresses and current working telephone numbers of Union representatives and identify their official positions within the Union. The Union shall promptly advise the County Manager of any changes in the foregoing information.
- 4.2 For any meeting called by the County with respect to business matters in connection with the relations between the County and the Union, at which any representative of the Union is required by the County to be present, such Union representative shall be paid at his appropriate rate of pay for the period of such meeting.
- 4.3 The County shall allow Union representatives, who are not County employees or who are off-duty County employees, to visit County facilities for the purpose of administering the provisions of this Agreement at such times and places which do not interfere with the operations of the County after first obtaining permission from the Chief of Fire and Rescue.
- 4.4 Stewards.
 - 4.4.1 The County shall recognize ten (10) stewards to serve as the Union's representatives. The purpose of recognizing ten (10) stewards being that a steward who is in a non-work status shall perform grievance handling.
 - 4.4.2 Normally, grievances shall be filed and processed during the non-work time of both the grievant and his steward, however in the event of a bona fide emergency, the employee may contact his immediate supervisor to request to be placed on relief from his current assignment to consult with his steward. In such event, the steward and the employee may be relieved from their respective assignments and allowed to consult as soon as it is practicable to do so. Pending relief, the employee shall continue to perform his assigned duties. Such consultation shall not unduly interfere with the operations of the Department as determined by the Chief or his designee. Upon being granted relief, the employee or steward shall be placed in an Authorized Leave Without Pay status until such time as they complete their consultation and return to a work status.
- 4.5 Union Officials. Union Officials are defined as members of IAFF 244 who have been officially elected to the position of President, Vice-President, Treasurer, Secretary, Chief Steward or Stewards of the Union. The Union shall notify the County Manager, in writing, within seven (7) work days following election of the Union Officials and shall notify the County Manager, in writing, of any changes

within seven (7) working days of the change.

- 4.5.1 The President or Chief Steward, after obtaining authorization from the Chief or his designee and dependent upon staffing levels and work load, may be allowed a justifiable amount of time without loss of pay in order to attempt to resolve pending grievances.
- 4.5.2 The President or Chief Steward shall keep a written daily log reflecting the date and time spent with respect to such matters, department personnel participating in the respective grievance, and a general description of the subject matter thereof. A copy of the log shall be submitted to the Chief on the last day of every pay period
- 4.5.3 Union officials may be granted annual leave or leave without pay for the purpose of attending conventions, training workshops, conferences or seminars depending on the staffing needs of the department.

ARTICLE 5 MEMBERSHIP AND CHECK-OFF OF UNION DUES

- 5.1 No employee shall be required to join, maintain membership in, or pay dues or fees to, the Union as a condition of acquiring, or maintaining employment.
- 5.2 During the term of this Agreement, an employee who is a member of the Union may execute a Dues Check-Off Authorization form, authorizing that a portion of his wages representing monthly dues or fees be withheld and forwarded to the Union. The Dues Check-Off Authorization shall be in the form set out and attached hereto.
 - 5.2.1 During the term of this agreement, an employee who is a member of the Union may execute a utility assessment form, authorizing that a portion of his wages as specified on the form be withheld and forwarded to the union. The utility assessment authorization shall be in the form set out and attached hereto.
 - 5.2.2 The deduction shall commence after receipt of the attached form.
- 5.3 Upon receiving a properly executed Dues Check-Off Authorization form from an employee, the County shall, as soon as practicable, effect such payroll deductions.
 - 5.3.1 The deduction of such dues shall commence with the first paycheck after receipt of the Dues Check-off Authorization form, and shall, within seven (7) days of receipt thereof, be paid over to the Union.
 - 5.3.2 Such deductions shall be strictly limited to the amount, as from time to time, may be certified in writing by the President as constituting the monthly dues or fees uniformly required as a condition of acquiring and retaining membership.
 - 5.3.3 An employee who wishes to revoke his Dues Check-off Authorization form shall deliver to the Human Resources Department and to the Union, a written and signed statement revoking the Dues Check-Off Authorization.
 - 5.3.4 No deductions shall be made during any pay period in which an employee has insufficient wages to cover the authorized dues deduction.
- 5.4 The Union shall indemnify and hold harmless the County and its Departments, as may be appropriate, from any and all liability which may arise, or be claimed to arise, out of or in connection with said dues deductions.
- 5.5 The Dues Check-Off Authorization form and utility authorization form shall be in the following format:

Date: _____

I, _____, am employed by the Bernalillo County in Albuquerque, New Mexico, and I do hereby designate the Albuquerque Area Fire Fighters, Local 244, International Association of Fire Fighters as my representative for the purposes of bargaining with the County of Bernalillo concerning my hours of work, compensation paid therefor and other terms and conditions of my employment.

In accordance with the provisions of Article 5 of the Agreement between the Union and the County, I hereby authorize the County of Bernalillo to withhold from my compensation and pay over to the Union, such amount as is certified by the President of the Union as representing the dues or fees uniformly required for:

_____ Membership Dues

_____ A utility assessment in the amount of \$25.00 to be deducted the first full pay period in January and the first full pay period in July.

This Dues Check-Off Authorization shall remain in full force and effect for the term of said Agreement or until such time as I revoke the same in writing.

Signature

Social Security Number

Address

City, State, Postal Zip Code

Telephone Number

ARTICLE 6 NON-DISCRIMINATION

- 6.1 The County shall not discriminate against any employee based on race, color, religion, age, sex, creed, national origin, political affiliation, Union membership or non-membership, veteran status or disability. The County shall not encourage or discourage membership in the Union.
- 6.2 The Union agrees to represent those employees within the certified bargaining unit for the purpose of negotiating collective bargaining agreements without discrimination based on race, color, religion, age, sex, creed, national origin, political affiliation, Union membership or non-membership, veteran status or disability.
- 6.3 The County and the Union agree that employees shall be provided a workplace that is free of discrimination, including sexual harassment
- 6.4 Any allegation of discrimination of the nature set forth in this Article shall be pursued under the procedures set forth in applicable, County policies, with the EEOC or in accordance with such other appropriate Statutory or Administrative procedures as are available.

ARTICLE 7 STRIKES, STOPPAGES AND LOCKOUTS

- 7.1 During the term of this Agreement, the County shall not lock out any employees. In the event the County violates this provision, the Union shall be free to take such appropriate legal and administrative action as may be available under relevant law, statute or regulation.
- 7.2 No employee shall, in concert with any other person, engage in any strike, stoppage or refusal in the course of employment to perform his assigned duties; or withhold, curtail or restrict his services or otherwise interfere with the operations of the County or encourage others to do so.
 - 7.2.1 In the event a bargaining unit employee engages in any of the actions identified in this Article, it shall be the responsibility of the Union, within 24 hours of a request by the County, to:
 - 7.2.1.1 Disavow such action by employees and notify the County Manager in writing that such action by employees has not been called or sanctioned by the Union;
 - 7.2.1.2 Take all reasonable steps to notify employees of its disapproval of such actions and encourage employees to cease and desist there from and return to work;
 - 7.2.1.3 Comply with Bernalillo County Code Section 2-201 et seq.
 - 7.2.2 In the event the Union fails to fulfill its responsibilities set out in Article 7.2.1, or if it is shown that the Union has incited, encouraged, or endorsed the violation of this Article, the County may petition the Bernalillo County Labor Relations Board to decertify the Union as the collective bargaining representative of the employees hereunder. The County may also take such other action against the Union as may be available under appropriate law, statutes and regulations.
 - 7.2.3 The Department reserves the right to discipline any employee who participates in any activity which is in violation of this Article.

ARTICLE 8 COMMUNICATIONS

- 8.1 It is understood by the parties that inaccurate information, incomplete information or the failure to exchange information is one of the major causes of breakdowns in the labor-management relationship. In the interest of preventing misunderstandings stemming from such lapses in communications the Parties agree to furnish information as follows:

8.1.1 The County shall:

- 8.1.1.1 provide copies to the Union, at its actual cost, copies of new policies, which are determined to be relevant by the County;
- 8.1.1.2 upon written request allow the Union access to County and Departmental policies, at reasonable times and places; and
- 8.1.1.3 Inform the Union of major relevant organizational changes within at least one-week prior notice of the effective date.

8.1.2 The Union shall:

- 8.1.2.1 inform the County of major changes in its organization, or policies;
- 8.1.2.2 provide the County with a current list of Union officers, and stewards. Such list shall describe the authority possessed by each individual, and shall be updated within seven (7) workdays of any such change.

- 8.2 The Parties agree to communicate only through the appropriate officials as designated by the County and the Union respectively.

ARTICLE 9 RECORDS INFORMATION

- 9.1 The County shall promptly furnish the Union upon request, copies of documents and records which come within the definition of public records. It is understood that it may be necessary to charge the Union in advance for the actual cost of such copies.
- 9.2 No material within County control, which contains adverse personnel actions or comments shall be placed in an employee's official personnel file without the employee being informed prior to the placement. The employee may insert a written response to any such matter in his file. An employee shall be permitted to inspect his own file. Copies shall be provided at reasonable charge.
- 9.3 Upon request, the County shall promptly produce an employee's departmental personnel file, should such file be maintained at the department level. However, the County has no obligation to produce supervisory files relating to personnel matters.

ARTICLE 10 BULLETIN BOARDS

- 10.1 The Department shall provide accessible space in each applicable building for posting notices on a bulletin board. Such space shall be subject to change in accordance with Department needs.
- 10.2 Material posted on the bulletin board by the Union shall contain only factual information and shall not contain derogatory statements concerning the County, or any agency or department thereof, or its employees or give partisan support to political issues. Material posted on the bulletin board which, in the opinion of the Chief or designee, is not in conformity with the above, shall be called to the attention of a Union representative who shall remove the material pending a final resolution of the issue pursuant to the Grievance procedure, ARTICLE 17.
- 10.3 Any material posted on the bulletin board shall bear the signature and title of the authorized Union representative, or designee, who posted it.

ARTICLE 11 SENIORITY

11.1 Seniority is determined by the date an employee is hired into a full time IAFF bargaining unit position.

11.1.1 In the event hire dates as described above are the same, the first letter (then second letter and so on) of the employee's last name shall determine seniority.

11.2 Time in grade Seniority: Applies to Fire Lieutenants, Deputy Fire Marshals, and is determined by the date the IAFF bargaining unit employee was promoted to the position of Fire Lieutenant or Deputy Fire Marshal.

11.2.1 In the event promotion dates are the same, the Employee's seniority shall be the deciding factor.

11.3 Seniority or Time in Grade shall be used in any case where a selection must be made between two (2) employees where all other qualifying factors are equal and as defined in this contract.

11.4 Seniority and Time in Grade will be terminated only under the following:

- a. Termination for just cause;
- b. Voluntary resignation;
- c. Authorized leave without pay for greater than twelve (12) months;
- d. Retirement;
- e. Failure to timely respond to recall notice, or rejection of recall; or
- f. Lay-off status for greater than the employee's total seniority time.

11.5 The County shall maintain a current seniority and time in grade list that will not be altered as a result of future changes in the seniority policy.

ARTICLE 12 LAYOFFS AND RECALLS

- 12.1 Layoffs. In the event of a reduction in the number of employees in the Department, employees shall be laid-off by job title in the reverse order of their time in that job title; i.e., the employee with the least time in that job title shall be the first to be laid off and so on. Employees who are impacted by a lay-off at a higher job title shall be first given the opportunity to accept demotion to their previous job title held or accept the layoff.

12.1.1 An employee shall receive fourteen (14) calendar days notice of the layoff.

- 12.2 Recalls. Employees shall be called back to work, in the inverse order of the sequence in which they were laid-off.

12.2.1 Employees shall be reassigned as to a job title in accordance with the procedures set out in 12.1 above.

- 12.3 Notice of recall. Employees on lay-off shall be recalled by certified mail, return receipt requested sent to their last known address as reflected in the official County/Departmental records. Laid-off employees shall be given a period of seven (7) days to respond to such notice, indicating whether or not the employee intends to return to work. Laid-off employees shall have a period of seven (7) days, from the date of the receipt of recall notice to notify the Chief of Fire and Rescue or his designee of acceptance or rejection of the recall opportunity and of the date on which he is available to return to work. The employee must return to work no later than thirty (30) calendar days from the date the employee receives the recall notice, unless the employee is unavailable to return due to military service or short-term disability. Failure to respond within the time period, or rejection of the recall opportunity shall be considered a voluntary termination. It shall be the obligation of the employee to demonstrate that his response was timely.

ARTICLE 13 ANNUAL SHIFT AND STATION REQUESTS

- 13.1 Shift and station assignment requesting is limited to personnel assigned to job descriptions where there is more than one (1) work location and/or shift. Requesting will be done by seniority for firefighters, and firefighter/paramedics and by time in grade for lieutenants and Deputy fire marshals
- 13.2 Employees are not required to participate in the shift request. Those employees who elect not to participate will be assigned by management.
- 13.3 Employees wishing to participate in the shift request may do so by any of the following methods:
 - 13.3.1 Submit five (5) shift choices, in order of preference, in writing no later than twenty-four (24) hours before the date of the shift request. The request must be time stamped by the receptionist. In the event all five (5) choices are filled, management will determine the shift assignment at the end of the shift requesting process.
 - 13.3.2 Requesting may also be done via telephone by calling the designated phone at the designated time to request.
 - 13.3.3 Requesting may be done at the designated place during the designated time.
- 13.4 Shift requests shall be done annually and completed before the end of the first week in April with the resulting shift change taking place at the beginning of the first full pay period in July.
- 13.5 Shift changes resulting from shift requests shall take place at 0900 hours the beginning of a new pay period.

ARTICLE 14 TRANSFERS

- 14.1 In the event that the County deems it necessary to permanently transfer employees to any shift that results in a change of work hours or work days, to accomplish the mission of the fire department, it shall be done in accordance with the following:
 - 14.1.1 The employee shall be notified in writing at least seven (7) calendar days prior to the transfer.
- 14.2 Employees who wish to permanently transfer shift and station assignments with another employee in the same job classification may submit a written request to the Chief for his review and approval. Employees who voluntarily transfer shift assignments shall forfeit all previously approved leave. However, the employee may submit a request for unscheduled leave based on their new shift assignment.

ARTICLE 15 VACANT POSITIONS

- 15.1 When the Human Resource Department posts a vacant position within the bargaining unit, and a bargaining unit member submits an application to be considered for such vacant position, the bargaining unit member shall be given a preference for hiring over applicants who are not members of the bargaining unit, where all other factors are equal.
- 15.2 Employees who transfer, are promoted or otherwise selected for employment to a new position within the bargaining unit shall serve a ninety (90) calendar day trial period. The County shall have the option of extending the trial period for up to an additional sixty (60) days, in thirty (30) day increments. In the event an employee should prove unsatisfactory within the trial period, the County shall return the employee to his previous classification if a vacancy is available. In the event no vacancy is available the employee shall be placed on lay off status and subject to recall pursuant to Article 12 (Lay Offs & Recalls).

ARTICLE 16 DISCIPLINE

16.1 General Statement.

16.1.1 The County shall discipline employees only for just cause.

16.1.2 The purpose of this ARTICLE is to encourage the use of counseling and positive discipline as methods of assisting employees in correcting work violations and behavior and improving job performance.

16.1.3 All disciplinary action, constructive criticism, or counseling shall be conducted in private.

16.1.4 All disciplinary action in the nature of suspension, demotion or dismissal shall be preceded by a written Notice of Intent to Discipline which shall include the conduct, action or omission which form the basis for the contemplated disciplinary action. The notice of intended discipline shall also identify the policy, regulation, procedure or statute violated.

16.1.5 Prior to the final disciplinary action of suspension, demotion or dismissal, a pre-determination hearing shall be held.

16.1.6 Thereafter, a Notice of Final Action shall be issued and served upon the subject employee, and shall be limited to those matters set forth in the Notice of Intent to Discipline.

16.2 Corrective Actions. The levels of corrective action are as follows:

16.2.1 **Oral Reprimand:** An Oral reprimand shall be used for minor infractions, and shall serve to inform the employee that his behavior and/or conduct need(s) to be improved. Oral reprimand notations shall not be placed in an employee's personnel file.

16.2.2 **Written Reprimand:** An employee shall receive a written reprimand in circumstances where the infraction is perceived to be of a greater consequence than that for which an oral reprimand was issued or if an oral reprimand was ineffective. Written reprimands relating to an employee's job performance or conduct shall be placed in the employee's personnel file after providing the employee with a copy of the reprimand. The employee shall acknowledge having read the contents of the reprimand by affixing his signature to the reprimand. So doing shall not be construed as the employee's agreement that the reprimand was warranted. If the employee refuses to sign, a witness (by his signature) must attest that the statement was presented to the employee for signature and the employee refused to sign.

16.2.3 **Suspensions and Demotions:** An employee may be suspended without

pay for a period not to exceed two hundred forty (240) hours, and/or demoted for a single serious offense or for continued substandard job performance or misconduct when previous attempt(s) to correct behavior have failed.

16.2.4 Dismissal: The final consequence when all other discipline has failed to improve unacceptable behavior or job performance, or when the employee has engaged in egregious behavior that the County determines to be unacceptable for its employees.

16.3 Procedure/Written Reprimands: In the event the written reprimand is not withdrawn, the employee may insert a response in his file to the reprimand.

16.3.1 Disputes regarding written reprimands may be contested through the Grievance Procedure hereof, but shall not be subject to the Arbitration provisions of ARTICLE 17.10.3.

16.3.2 One (1) year after a written reprimand has been issued to an employee, upon written request from the employee, the written reprimand shall be removed from his personnel file, provided that the employee has received no further discipline for the same or similar offense.

16.4 Procedure - Suspension, Demotion or Dismissal: Disputes regarding suspensions, demotions or dismissals may be contested utilizing the Grievance Procedure set forth in this Agreement. However Step Two, as set forth in ARTICLE 17.10.2.2 shall be the final step in the grievance procedure before the parties submit their dispute to Arbitration pursuant to the provisions of ARTICLE 17.10.3.

ARTICLE 17 GRIEVANCE PROCEDURE

- 17.1 Statement of Purpose. The parties hereto agree that the prompt and equitable resolution of grievances hereunder is essential to the proper and efficient operation of the Department and all reasonable efforts shall be made by the parties and the employees to resolve all grievances in a timely and mutually satisfactory manner. To that end, the parties agree to attempt to resolve all grievances at the lowest possible step.
- 17.2 No employee who uses or participates in the grievance procedure shall be subjected to retaliation of any kind or nature for having participated in this procedure, nor shall he be threatened, intimidated or coerced in any manner, for having done so.
- 17.3 All grievances shall be maintained in separate grievance files and shall not be included in the personnel file of any individual grievant. Upon resolution of the grievance, or decision by an arbitrator, a copy of any grievance arising from disciplinary action shall be retained in the grievant's personnel file unless the arbitrator rules otherwise.
- 17.4 All references to the "grievant" shall be construed to include the Union or individual grievant as may be required by the context of the reference.
- 17.5 The procedures for filing a grievance shall be the same for all grievants. The grievance procedure shall be accessible to all employees in the bargaining unit, regardless of whether or not they are members of the Union.
- 17.6 The parties may utilize tape recorders or other electronic recording devices to assist them in taking notes, however such recordings shall have not standing to serve as an official record of proceedings.
- 17.7 This procedure shall be the sole and exclusive method of resolving any and all grievances as that term is defined in Article 17.8.1.
- 17.8 Definitions.
- 17.8.1 **Grievance:** A grievance is any difference, dispute or disagreement concerning the application, interpretation or meaning of this Agreement. As used in this Agreement "grievance" means any formal complaint alleging the misinterpretation, misapplication or the violation of any provision of this Agreement. Only matters involving the interpretation, application or alleged violation of a specific provision of this Agreement shall be subject to this grievance procedure.
- 17.8.2 **Grievant:** A grievant is any employee, group of employees or Party who files a grievance under the procedures set forth in this Article.

17.8.3 **Time:** All time periods referred to herein shall be measured in working days, Monday through Friday excluding holidays recognized by the County.

17.8.4 **Settlement:** means the agreed-upon resolution of the grievance, set out in writing and signed and dated by the parties.

17.8.5 **Waiver:** Any step of this procedure may be waived by mutual agreement of the Parties.

17.9 Time Limits.

17.9.1 All time limits set out in this Article shall be of the essence and strictly enforced. Any of said time limits may be extended with respect to a specific grievance by written agreement of the parties to the grievance.

17.9.2 If the County fails to respond within the designated time limits, the grievance shall be deemed denied, and shall be advanced to the next step of the grievance procedure. If the grievant fails to appeal to the next step within the time limits, the grievance shall be deemed settled on the basis of the County's last response.

17.10 Resolution of Employee Grievances.

17.10.1 **Informal Resolution Step:** A complainant may at any time prior to the filing of a formal grievance, first attempt to resolve the matter informally.

17.10.2 **Formal Resolution Step:**

17.10.2.1 **Step 1a:** If the grievance is not settled at the informal step, the grievant may advance the grievance to Step One, by submitting a formal written grievance, within ten (10) days of the event giving rise to the grievance, or within ten (10) days of the grievant's becoming aware of the event giving rise to the grievance, or within ten (10) days of the date the grievant should have become aware of the event giving rise to the grievance, and submitting the same to the Chief. The formal written grievance shall identify the current grievance step, the event upon which the grievance is based and the date upon which it is alleged to have occurred, the specific provision(s) of the Agreement which are alleged to have been breached and the remedy sought. The grievance shall be dated and signed by the grievant(s). The grievant may, at any step of this procedure, request the assistance of his steward, or other formally designated Union representative or officer, to prepare the grievance form, process the

grievance or otherwise represent the grievant.

Step 1b: The recipient of the grievance shall note the date and time of receipt on the grievance form, and shall respond in writing within ten (10) days from the date of receipt. The response shall be made on the grievance form and a copy of the completed form shall be returned to the grievant, steward or Union representative, as the case may be.

17.10.2.2 **Step 2a:** If the grievance is not settled at Step One of this procedure, the grievant may, within five (5) days of receipt of the Step One response, appeal the grievance to the County Manager or his designee on the original grievance form and setting forth all of the information required in Article 17.10.2.1 (step 1a). The County Manager's Office shall note the time and date of receipt of the appeal on the grievance form. A conference to discuss the grievance and any settlement thereof shall be scheduled by the parties within five (5) days of receipt of the appeal. This meeting shall be convened at the mutual convenience of the parties, but no later than five (5) days after having been scheduled. If the grievance is settled at the conference, the settlement shall be reduced to writing, noting the terms thereof, the date and the time of settlement, and shall be signed by the parties, and the grievant, if appropriate.

Step 2b: If the grievance is not settled at the Step Two conference, within five (5) days thereof, the County Manager or designee shall set out his response to the grievance in writing, either on the grievance form, or attached thereto. The response shall be signed, dated and returned to the grievant, steward or Union representative, as the case may be

Step 2c: Upon being appealed to the Step Two conference, the grievance shall be treated as a final document, and no amendments shall thereafter be permitted.

17.10.3 **Arbitration:**

17.10.3.1 If the grievance is not settled as the result of the County Manager or designee's Step Two written response, the grievance may, within five (5) days thereof be submitted to Arbitration by serving notice on the County Manager's Office of the grievant's intent to submit the matter to Arbitration.

17.10.3.2 Arbitration shall be limited to any difference, dispute or

disagreement concerning the application, interpretation or meaning of this Agreement, and disputes concerning disciplinary actions involving suspension, demotion or dismissal. Arbitration shall not be available when other avenues for relief are available such as relief that may be obtained through the filing of charges with the Human Rights Commission, EEOC or the filing of a worker's compensation claim.

- 17.10.3.3 The parties shall attempt to agree on an Arbitrator from the list of names appearing on the panel of approved Arbitrators. In the event they are unable to agree, the grieving party shall strike the first name from the list of Arbitrators and thereafter the parties shall alternately strike names until only one name remains. That individual shall serve as the Arbitrator.
- 17.10.3.4 The parties shall share the costs of Arbitration proceedings equally including the Arbitrator's fees and any costs imposed for use of facilities. Each party shall bear its own costs, including but not limited to expert witness fees, costs of reproduction of documents, and attorney's fees.
- 17.10.3.5 A party may have no more than two (2) personal representatives, one of whom may, but need not, be an attorney, represent him at any stage of the grievance procedure or at the Arbitration proceedings.
- 17.10.3.6 Unless otherwise agreed by the parties, each party shall be limited to a maximum of five (5) hours to present its case, except in cases involving termination.
- 17.10.3.7 As a condition of employment, employees shall be required to appear as witnesses in grievance hearings when requested by the County. The County shall bear the expense of any witnesses that it calls. The Union or the grievant as may be appropriate, shall bear the expense of any witnesses called by the grievant or the Union on its behalf.
- 17.10.3.8 The Arbitrator shall have no authority to add to or to arbitrate away in whole or in part any provision of this Agreement. The Arbitrator shall, within the time limits set forth below, issue his award and a written opinion in support thereof. His opinion and award shall be confined to an interpretation of the Agreement and a resolution of the specific grievance under consideration, as set forth at the Step Two conference. The Arbitrator shall have no authority to

determine any issue not specifically so submitted. The Arbitrator shall have no authority to grant interest in connection with any award of back pay or benefits.

- 17.10.3.9 The opinion and award of the Arbitrator shall be final and binding on the parties to the extent provided by applicable law or regulation.
- 17.10.3.10 In the event the Arbitrator has reversed or modified the disciplinary action, the Arbitrator shall have the authority to only award back wages, credit for sick and annual leave that would have accrued from the date of dismissal through the date of reinstatement, reimbursement for any premiums paid by the employee to continue health and dental insurance. In the event the Arbitrator awards back wages, the employee shall provide the County with a sworn statement of gross earnings and unemployment compensation received during the period from the date of dismissal through the date of reinstatement.
- 17.10.3.11 The Arbitrator's opinion and award shall be transmitted to the parties by first-class mail within thirty (30) days of close of the hearing.
- 17.10.3.12 The parties may agree to expedited Arbitration and request the Arbitrator to issue his opinion and award orally from the bench at the conclusion of the hearing, or upon agreement by the parties, may issue a summary opinion and award prior to the expiration of thirty (30) days.
- 17.10.3.13 A party at its own cost, may request that a certified Court Reporter attend and transcribe the Arbitration hearing. In such event the Party making such request shall bear the cost of the Court Reporter. Each party shall bear the cost of its own copy of the transcript.
- 17.10.3.14 In the event a Court Reporter is not requested, a recording of the hearing shall be made by the Department. A copy of the tape recording, which shall serve as the official transcript of the hearing, shall be provided to the parties at actual cost of the cassettes.

ARTICLE 18 SICK LEAVE

- 18.1 Sick leave shall accumulate without limitation, at the rate of .05 hours for each one (1) hour worked in a regular paid status.
- 18.1.1 Sick Leave shall not qualify as time worked for the purpose of calculating overtime.
- 18.2 Sick leave shall be granted when an employee is unable to perform normal job duties due to personal, spousal or parental medical considerations including, but not limited to illness, injury, pre-approved medical or dental examinations, quarantine, therapy or counseling.
- 18.3 Sick leave shall not be used for relief from the effects of a second job (moonlighting). Violation of this provision may result in disciplinary action up to and including dismissal. An Employee dismissed for cause shall forfeit all accumulated sick leave.
- 18.4 A physician's excuse shall be required when an employee has used two or more consecutive shifts of sick leave; except for employees working less than a twelve (12) hour shift. For employees working a shift of less than twelve (12) hours, a physician's excuse shall be required after three (3) or more consecutive shifts. An employee may be required to submit a physician's certificate for an absence when an employee has utilized fewer than two (2) consecutive shifts of sick leave, if the County determines that a pattern of sick leave abuse or misuse is being established by an employee. A physician's certification may be requested by the Department to support sick leave when a pattern of absences develops or when there is excessive sick leave use within a six (6) month period. Failure to submit a physician's certificate when requested shall prohibit the employee from receiving sick leave with pay for the period in dispute and may result in disciplinary action up to and including dismissal.
- 18.5 An employee on sick leave shall be considered as having voluntarily terminated employment without notice if they engage in other forms of employment, regardless of whether such employment has been approved by the County.
- 18.6 As a benefit and incentive for the proper use of sick leave benefits, employees may convert accrued sick leave as follows:
- 18.6.1 An employee who has accrued more than seventy-two (72) hours of sick leave in a calendar year shall be eligible to receive a cash payment for a maximum of forty (40) hours of regular straight time pay for all such hours in excess of seventy-two (72) accrued within that calendar year. Payment for the excess hours shall be made the first payday in December. All such converted hours shall be deducted from the employee's sick leave balance.

18.6.2 Any employee with a sick leave balance of three hundred (300) or more hours, by the first pay period in December, may choose to convert up to forty (40) hours to pay. Any hours converted shall be deducted from the sick leave balance.

18.6.3 Employees eligible under the Public Employee Retirement Act may at the time of retirement convert accumulated sick leave to annual leave on a one for one basis.

18.7 Contribution of Leave to Fellow Bargaining Unit Employee.

18.7.1 An employee may contribute any of their annual leave balance to another employee within the Bargaining Unit when the following criteria are met:

18.7.1.1 The employee is in need of sick leave time due to critical circumstances;

18.7.1.2 The contributing employee has an accumulated sick leave balance in excess of eighty (80) hours; and,

18.7.1.3 The hours contributed are transferred from one employee to another in hourly increments.

18.7.2 Bargaining unit members with a severe medical condition may receive contributed hours by employees outside the bargaining unit but within the County.

18.7.3 Conversion of annual leave is accomplished by submitting a written departmentally approved request to the Human Resources Department.

18.7.4 Hours transferred shall be converted to the other employee's account based on value of hours contributed, but recorded as converted hours based on value of hours used.

18.7.5 An employee using contributed hours will be assured a County position for which he qualifies as a position becomes available, but will give up the right to his current position once he has started using contributed hours. An employee on contributed hours shall be considered on leave without pay and shall not accrue sick and annual leave. An employee receiving worker's compensation shall not receive contributed hours.

ARTICLE 19 LEAVES AND SCHEDULING

19.1 Requests or Use of Leave. It is the County's policy to approve all requests for leave in a fair and equitable manner, consistent with Departmental staffing requirements. Inappropriate requests or use of leave may result in such leave being denied, or the leave may be deemed as unauthorized.

19.1.1 Scheduled leave for the purposes of this article is: Annual Leave, Personal Leave, Accrued Holiday Leave for the first day in the first full pay period of July of the current year through the last day of the last full pay period of June of the following year.

19.1.1.1 Employees shall submit their requests through the department scheduling system before the third week in April.

19.1.1.2 Approval shall be based on seniority and job title

19.1.2 Unscheduled leave for the purposes of this article is: Annual Leave, Personal Leave, Accrued Holiday Leave submitted after the completion of scheduled leave.

19.1.2.1 Employees shall submit their requests for unscheduled leave through the department scheduling system no later than 24 hours in advance of the date for which leave is requested.

19.1.2.2 Unscheduled leave shall be approved on a first-come, first-approved basis.

19.2 Annual Leave: All employees covered by this Agreement shall be entitled to annual leave with pay in accordance with the following schedule:

Seniority	Reg. Hrs. Worked	Accrual
Up thru 5 years	1	.05 hrs
6 thru 10 years	1	.065 hrs
11 thru 15 years	1	.075 hrs
16 years and over	1	.085 hrs

19.2.1 During each full calendar year of employment, no more than 288 hours of annual leave may be carried forward into the following calendar year.

19.2.2 The County shall, upon request, pay the estate of a deceased employee the full cash equivalent of the accrued annual leave as of the employee's last date worked.

19.2.3 The County shall pay an employee, who separates their employment with the County in good standing, the full cash equivalent of accrued annual leave upon such employee's separation from service with the County.

- 19.3 Personal Leave: Each employee shall receive two (2) shifts off as personal leave days to be taken with prior approval of the Department.
- 19.4 Accrued Holiday Leave: Employees will receive eleven (11) shifts off per year, in lieu of the designated County holidays.
- 19.4.1 The first day of each month, except for the month of July, employees will accrue one (1) shift off to be taken within three (3) calendar months.
- 19.4.2 Holiday Leave shall not be considered hours worked.
- 19.4.3 Shifts not used in the allotted time period will be forfeited unless the failure to utilize was due to Departmental requirements.
- 19.4.4 The County may choose to offer pay in exchange for any amount or all unused holiday leave hours, provided for in this Article, at any time during the year. If this offer is made the employee shall be paid his regular rate of pay for hours exchanged. The County may make this offer to any individual, job title/classification or to the entire bargaining unit at its sole discretion.
- 19.5 Unauthorized Leave Without Pay (ULWP): Employees who fail to appear for work without authorized leave shall be considered to be on Unauthorized Leave Without Pay and may be subject to disciplinary action up to and including dismissal. Employees shall not be paid for any periods of unauthorized leave and shall not accrue sick or annual leave during periods of unauthorized leave. Unauthorized Leave for two or more consecutive work shifts shall be considered as abandonment of the position and voluntary resignation with the County.
- 19.6 Leave Without Pay (LWOP): The Department may authorize leave without pay for six (6) months or less, upon written request of the employee concerned. An employee shall be returned to his former position or be reassigned to a comparable position if the employee returns to work within six (6) months of the day LWOP became effective. This requirement may be waived by written agreement of the employee. The County shall have no obligation to return the employee to his former or comparable position if the LWOP is for a period greater than six (6) months. Requests for LWOP in excess of six (6) months shall be in writing and directed to the County Manager. Neither annual leave nor sick leave shall be accrued while on LWOP. Failure to report back to work upon expiration of approved LWOP shall be considered as ULWP.
- 19.7 Bereavement Leave: Leave with pay for which the employee is not charged sick or annual leave due to the death of an immediate family member. Employees shall be required to provide documentation that provides proof of familial relationship. Failure to provide such proof shall result in the employee being charged with Unauthorized Leave Without Pay. Bereavement Leave may be granted based on the following schedule:

- 19.7.1 For the death of an employee's mother, father, sibling, spouse, children, either adopted or biological, or grandchildren and like relatives of employee's spouse up to forty (40) hours.
- 19.7.2 For the death of an employee's grandparents, great-grandparents, aunts, uncles and like relatives of the employee's spouse within New Mexico up to twenty-four (24) hours.
- 19.7.3 For the death of an employee's grandparents, great-grandparents, aunts, uncles and like relatives of the employee's spouse outside of New Mexico up to forty (40) hours, however, the employee must provide proof of travel and a copy of the obituary.
- 19.8 Administrative leave: For the purpose of this Agreement, an employee placed on Administrative Leave shall be required to call-in on a daily basis as directed at the time the employee is placed on such leave status.
- 19.9 Educational Leave: Employees may be granted leave with pay to attend approved courses at vocational schools or colleges, which contribute to the employee's job performance or job advancement within the County. Any employee who does not receive a passing grade shall be required to reimburse the County for all compensation received.
- 19.10 Military Leave: All employees authorized military leave shall be granted such leave in accordance with 38 USC 2024(d) and NMSA 20-9-8, 1978. It is the responsibility of the employee to provide the Chief or designee with notification of the required absence at least (15) fifteen days prior to the commencement of leave or promptly upon receiving such notification. The employee shall also provide the Chief or designee a copy of the military leave orders if such orders are written.
- 19.11 Jury Duty Leave: An employee, when called for jury duty by a federal, state, metropolitan or magistrate court, shall be given a paid leave of absence, provided that the employee provides adequate proof of dates and time served and returns to the County the jury fee received (other than meals and travel allowances)

ARTICLE 20 WORK PERIOD, OVERTIME/STAND-BY/NO PYRAMIDING

- 20.1 **Work Period:** The parties have elected Section 207K exempt status under the Fair Labor Standards Act. Accordingly, for overtime calculation purposes work periods shall be fourteen (14) consecutive calendar days.
- 20.2 **Pay Period:** A two-week period of which there are twenty-six (26) specified per year.
- 20.3 **Overtime:** Employees shall be paid at the rate of time and one-half their regular straight time rate of pay for all time worked in excess of 106 hours in any fourteen (14) day period. Administrative leave, personal leave, accrued holiday leave, sick leave and annual leave or any other form of authorized leave identified in this Agreement shall not qualify as time worked for the purpose of calculating overtime pay.
- 20.4 **Additional Time:** All additional time opportunities shall be authorized by the Chief or his designee, according to financial and budgetary constraints. Additional time shall qualify as time worked for the purpose of calculating overtime pay
- 20.4.1 The Department shall prepare, maintain and post, on a daily basis, a current list of those employees who wish to be considered for additional time opportunities. Employees who wish to be considered for extra duty may sign up through the Department scheduling system. The offer for additional time shall be prioritized by total hours within the work status. Employees accepting the additional time shall be required to fulfill such assignment. Employees offered additional time and having rejected twice (2) shall be barred from additional duty opportunities for a three (3) month period. If no employee voluntarily accepts additional time, additional time shall be assigned on a rotating basis, to an employee on-duty, the shift prior to the vacancy; Employees so assigned shall be required to fulfill such assignments. For time periods of three (3) hours or less, for example when coverage is needed for early relief or for late arrivals assignment of additional time will be at management's discretion with the option to bypass the additional time list.
- 20.4.2 Offer: When the department scheduling system places a phone call.
- 20.5 **Stand by:** Duty status wherein an employee is required to be available for immediate call-out at times when the employee is otherwise not assigned to his regular duty post. During such call out period the employee shall be issued a pager and expected to remain fit for duty within range of paging system.
- 20.5.1 Employees shall not be placed on stand-by status while on leave.
- 20.5.2 An employee assigned stand-by duty, shall be paid eighty five cents (.85) per hour for each hour the employee is placed on standby.

20.6 **Call Back:** When an employee, on off-duty status or stand-by, is ordered to report to work immediately upon notification.

20.6.1 Call back shall be paid at one and one half (1-1/2) times the employee's regular hourly rate of pay.

20.6.2 The employee who is called back to duty shall be guaranteed a minimum of three (3) hours of call back pay.

20.6.3 Call back periods overlapping the start of an employee's regular scheduled shift shall be paid as regular hours worked with no three (3) hour minimum.

20.6.4 Call back time shall commence when the employee is contacted. This is intended to cover travel time for the employee.

20.7 **Pyramiding:** Compensation shall not be paid more than once for the same hours under any provision of this Agreement.

ARTICLE 21 SHIFT/HOURS EXCHANGES

- 21.1 Employees in the same job classification may request shift trades.
- 21.2 Written requests for shift trades shall be submitted to Headquarters on the proper form, for all exchanges of one-half hour or more. The request shall be submitted at least forty-eight (48) hours prior to the time of the trade, absent extenuating circumstances.
- 21.3 Shift trade requests shall be approved or disapproved at the sole discretion of the Chief of Fire & Rescue or designee. No employee shall execute a shift trade without first obtaining prior written/electronic approval.
- 21.4 The employee who agrees to work the shift shall be responsible for execution of the shift. In the event the employee reports off for any reason such time shall be authorized leave without pay.
- 21.5 All shift/hour exchanges must be completed within a forty-five (45) day period from the date of the first shift exchange.
- 21.6 The Union agrees to indemnify and hold harmless the County from any claim made by a bargaining unit employee concerning a demand, administrative claim or lawsuit involving a claim for overtime compensation as the result of a shift/hour exchange pursuant to this Article. The Union agrees that this agreement to indemnify and hold harmless shall survive the expiration of this collective bargaining agreement and shall run for the applicable limitations period for contract claims and claims brought pursuant to the Fair Labor Standards Act.
- 21.7 The Union shall be responsible for reimbursing the County for any overtime expense, call-back or holdover compensation when an employee fails to fulfill their obligation to complete a shift trade.
 - 21.7.1 The holdover compensation applies only to those situations where the employees does not appear for the shift and not for instances where an employee is enroute from one station to another
- 21.8 The Memorandum of Understanding is now considered as part of Article 21 and serves to clarify the language herein.

ARTICLE 22 TEMPORARY UPGRADES

- 22.1 Whenever an employee is assigned by the Chief or designee, to perform the duties and assume the responsibilities of a classification higher than the employee's permanent classification.
- 22.1.1 The employee shall receive four percent (4%) over his normal rate of pay for each hour worked in a temporary upgraded position.
- 22.1.2 Approved leave hours shall not be compensated at the upgraded rate of pay.
- 22.1.3 Temporary Upgrade to Captain/Commander will be assigned to the senior on duty Lieutenant.
- 22.1.4 Temporary Upgrade to Lieutenant will be assigned to qualified employees on a current Lieutenant promotional list, that are on duty, on a rotating basis in an attempt to give equal opportunity to all qualified employees. If a temporary upgrade would cause additional time in that job classification on that shift, the Lieutenant vacancy will be filled with a Lieutenant per Article 20 of this collective Bargaining Agreement.

ARTICLE 23 MODIFIED DUTY

- 23.1 Modified duty refers to duty other than normal duties and may result in a change in the employee's regular schedule and is intended for those employees that have suffered an on the job injury or illness. The intent of this provision is to permit such employee to return to work as soon as it is medically permissible for him/her to do so. It is not the intent of this provision that such duty is of a "make work" nature. Upon release from the County designated physician, employees may be offered a temporary modified duty assignment within the Department. Such employee shall not be assigned to a position that could jeopardize or aggravate his physical condition. Employees allowed to work a modified duty assignment shall be scheduled to work a base schedule of 0800hrs to 1700hrs, with an hour lunch period, Monday through Friday. The following conversions will apply to employees who have sustained a work related illness or injury. However, article 24.3 is solely for use by employees who have sustained a work-related illness or injury:
- 23.2 Leave Conversion from 53-hour workweek to 40-hour workweek.
- 23.2.1 While the employee is on a temporary modified duty assignment, holidays shall be converted to a 40-hour schedule and taken on County designated holidays. If the employee does not have a holiday available during a County designated holiday the employee must use his accumulated leave
- 23.3 Salary Conversion from 53-hour workweek to 40-hour workweek.
- 23.3.1 $[\text{Base hourly wage}] + [\text{Longevity}] * [53 \text{ hours}] \text{ per week} = \text{normal weekly sum.}$
- Normal weekly sum divided by 40 hours = Modified hourly wage.
- Proof:**
Firefighter A earns \$ 11.8182 = Base hourly wage [plus longevity]
*This is 10.5% over the base hourly rate, thus accounting for 7 years longevity
 $\$11.8182 * 53 = 626.3646$
Therefore \$626.3646 is their normal weekly sum.
 $626.3646 / 40 = 15.6591$
Therefore \$15.6591 is their modified hourly wage.
- 23.4 Nothing above will prevent the Chief or his designee from approving modified duty for those employees developing an injury or illness off duty, at his discretion. This modified duty will be paid at a base hourly wage plus longevity for 40 hours.

ARTICLE 24 WORKERS' COMPENSATION/INJURY TIME

- 24.1 An employee injured on the job or suffering from occupational diseases, as defined in the New Mexico Workers Compensation Statute, shall receive Worker's Compensation benefits as prescribed by law.
- 24.2 All job-related injuries requiring medical attention shall be reported in accordance with the County of Bernalillo's Loss Control Policy.
- 24.3 An employee who incurs a job-related injury/illness shall visit a County contracted physician. The County contracted physician, and/or his professional team may treat the employee or refer the employee to a non-contract physician depending upon the nature of the medical problem.
- 24.4 When an obvious medical emergency situation exists, the employee shall be taken, or go to the nearest emergency room or urgent care center. The County contract physician shall coordinate treatment subsequent to emergency treatment.
- 24.5 An employee who works a minimum of forty (40) hours per week is eligible for a maximum of eight hundred (800) working hours, twenty (20) weeks, of injury time compensation.
 - 24.5.1 During the eight hundred (800) hour period of injury time, the County shall pay the employee's share of all those employee benefits sponsored by the County.
 - 24.5.2 In the event that two-thirds (2/3) of the employee's gross salary exceeds the maximum paid by Worker's Compensation, the County will pay the employee the difference between the amount paid by Worker's Compensation and the two-thirds (2/3) of the employee's gross salary during the eight hundred (800) hours of injury time. However, the County shall not be responsible for paying the difference if the Worker's Compensation benefit is reduced as the result of a garnishment, tax levy or other Court Order.
 - 24.5.3 An employee injured on the job may use accrued annual or sick leave for each regularly scheduled work day after the injury occurs for all such days not paid by Worker's Compensation. Employee shall not be entitled to any Worker's Compensation benefit for all days where annual leave or sick leave was received by the employee in lieu of Worker's Compensation. Annual leave or sick leave used by the employee in lieu of Worker's Compensation shall be re-credited to the employee upon receipt of the reimbursement by Worker's Compensation after the expiration of the statutory waiting period.
 - 24.5.4 An employee shall accrue annual leave and sick leave while on injury time.

- 24.6 In the event of a lump sum settlement with Worker's Compensation, the settlement shall be adjusted for the injury time payments previously received, provided that in no case shall the deduction exceed the amount of the lump sum settlement.
- 24.7 An employee shall return to his former position or be reassigned to a comparable position if the employee obtains a physician's certification indicating that the employee is able to return to work and perform the essential functions of his position and the employee returns to work within six (6) months of the date of injury.
- 24.8 An employee returning from Worker's Compensation disability may return to Modified Duty if an appropriate position is available or if the County can reasonably accommodate the employee by modifying the job requirements and the employee's physician certifies that the employee is capable of returning to a modified work schedule.
- 24.9 An employee on modified duty will not be placed in a position which could jeopardize or aggravate their physical condition. The intent of this provision is to permit the return to work as soon as it is medically possible.

ARTICLE 25 INSURANCE COVERAGE

- 25.1 Health. For each employee the County shall pay up to a maximum of seventy-five percent (75%) of the monthly premium for any health insurance plan offered to employees by the County. The employee shall pay the balance of the monthly premium.
- 25.2 Dental. For each employee the County shall pay up to a maximum of fifty-two per cent (52%) of the monthly premium for any dental insurance plan offered to employees by the County. The employee shall pay the balance of the monthly premium.
- 25.3 Life. For each employee the County shall pay up to a maximum of sixty percent (60%) of the monthly premium for any life insurance plan offered to employees by the County. The employee shall pay the balance of the monthly premium.
- 25.4 Inoculation and Immunization. Where health and/or Worker's Compensation insurance do not provide coverage for inoculation or immunization for contagious diseases, the County agrees to provide coverage for such inoculation or immunization for the employee and those family members residing in the same household as the employee. The County is obligated to provide coverage only for those procedures that are proven to be medically effective. In the event the employee or any family member fails or refuses to timely complete the required series of such inoculation or immunization procedures pursuant to this provision, the employee shall be liable to reimburse the County for all expenses thus incurred.

ARTICLE 26 CAMPAIGNING FOR PUBLIC OFFICE

26.1 The work place should be maintained in a manner so that partisan politics do not influence the operations of the County. A potential for a conflict of interest exists when public employees engage in political activities while on duty. In order to lessen the likelihood of such conflicts, without unduly restricting an individual's rights to seek public office, the following procedures shall be followed:

26.1.1 Any employee wishing to run for a political office within Bernalillo County government shall take a leave of absence, using paid annual leave or leave without pay, effective immediately upon filing official notice with the Bernalillo County Clerk of intent to seek such office. The concerned individual shall remain in the leave status until certification of the general election in the event that he is victorious, or until he has officially withdrawn from the election or has been eliminated in a primary election.

26.1.2 The County shall approve all requests for leaves of absence to run for Bernalillo County office.

26.1.3 In the event any amendment of County Ordinance 91-8 alters an individual's rights to seek public office, this ARTICLE shall immediately become the subject of renegotiation.

ARTICLE 27 DRUG AND ALCOHOL TESTING

27.1 The use of drugs and alcohol, whether on or off the job or for "recreational purposes" or otherwise, constitutes a serious threat to the health and safety of the public, to the safety of the employees, and to efficient operation of the County. In recognition of this principle, the following procedure shall be utilized to eliminate the adverse impact of drugs and alcohol in the workplace:

27.1.1 Whenever the County requires a drug test, the employee's urine shall be tested for the following drugs or their metabolites and a positive test result shall be reported to the Medical Review Officer at the indicated levels:

amphetamines - 1000 NG/ML
barbiturates - 200 NG/ML
benodiazepines - 200 NG/ML
cannabinoids - 50 NG/ML
cocaine metabolites - 300 NG/ML
methadone - 300 NG/ML
methaqualone - 300 NG/ML
opiates - 300 NG/ML
phencyclidines - 25 NG/ML
propoxyphene - 300 NG/ML

27.1.1.1 Alcohol shall be tested by the use of a breath analysis and a positive test shall be reported at an alcohol concentration of greater than .04 or greater.

27.1.2 An employee shall be required to undergo a drug/alcohol test if there is a reasonable suspicion that the employee's alcohol or drug use could impair job performance and/or safety.

27.1.3 Reasonable suspicion shall mean that there is objective evidence, based upon known specific, articulable observations of the employee's appearance, behavior, speech or body odor that would lead a reasonable person to believe that the employee is under the influence of alcohol or drugs while on duty.

27.1.4 When a reasonable suspicion has been developed to lead a supervisor, to believe that an employee is under the influence of drugs or alcohol, he shall report such suspicion to the Chief of Fire and Rescue. The Chief or in his absence the Chief's designee may order an analysis of the concerned employee's breath or urine for the exclusive purpose of detecting the use of drugs or alcohol.

27.1.5 The County shall be responsible for transporting the employee to the testing site.

27.2 Any employee who is involved in an accident with a County owned vehicle, or

personally owned vehicle during the course and scope of their employment, shall be required to submit to a post-accident breath and urine test. An accident shall be defined as all events involving a County a vehicle during the course and scope of their employment which results in damage to any vehicle, injury to a person or damage to any property.

- 27.3 Self-Identification. An employee who believes or suspects that he may have a problem with controlled substance use and/or alcohol misuse may voluntarily identify themselves to the County Personnel Department's Controlled Substance and Alcohol Coordinator (CSAC) or CSAC's designee. The CSAC or CSAC's designee shall refer the employee to the County Employee Assistance Program (EAP) for evaluation by a Substance Abuse Professional (SAP).

27.3.1 Within three (3) working days of self-identification, an employee shall elect to participate in the County approved treatment plan or resign from employment with the County, or otherwise be subject to dismissal from the County of Bernalillo.

27.3.2 If the SAP determines that an employee who has self-identified for alcohol misuse also abuses substances or that an employee who has self-identified for substance abuse also misuses alcohol, the SAP can require that the employee be tested for substance abuse and alcohol misuse.

27.3.3 An employee may self-identify at anytime except within thirty-two (32) hours after an accident or after being notified that they must submit to a pre-employment, random or reasonable suspicion testing and shall only be allowed to self-identify once for either substance abuse or alcohol misuse during any employment with the County, regardless of any break-in-service or change in job position.

27.3.4 All costs of the initial evaluation by the SAP shall be the County's responsibility. All costs for counseling or rehabilitation shall be the employee's responsibility.

27.3.5 An employee who self-identifies shall only be granted leave in conjunction with self-identification as determined necessary by the SAP. In the event the SAP determines leave is necessary, the employee shall be granted either annual leave, sick leave or leave without pay status.

27.3.5.1 In the event the employee is eligible for benefits under the Family and Medical Leave Act (FMLA), any leave taken by the employee, either paid or unpaid, shall be considered leave taken under FMLA.

27.3.6 An employee who self-identifies is subject to substance abuse and/or alcohol testing at the discretion of the SAP any time between self-identification and when the SAP's certifies the employee is again able to

perform his job duties.

27.3.7 An employee who self-identifies shall be in compliance with the County approved treatment plan upon the SAP's certification that the employee is able to perform his job duties, but in no event shall the period to return to performing his job duties exceed ninety (90) calendar days after self-identification.

27.3.7.1 Compliance with the County approved treatment program means that the employee has submitted to a return-to-duty substance abuse test with a "verified negative" result and/or an alcohol test with either an alcohol concentration of 0.02 or less or an alcohol concentration of zero if any use of alcohol is prohibited by the employee treatment plan, and the employee is cooperating in the County approved treatment plan.

27.3.7.2 Non-compliance with the County approved treatment plan shall subject the employee to dismissal.

27.3.8 Once an employee has been released to work after self-identification and return-to-duty testing, the employee shall be subject to unannounced follow-up alcohol and/or controlled substance testing as directed by the Substance Abuse Professional (SAP). An employee shall be subject to a minimum of at least six (6) tests in the first twelve (12) months following the employee's return-to-duty.

27.3.9 An employee who undergoes a controlled substance test at any time after self-identification, and receives a "verified positive" result, shall be dismissed.

27.4 In the event the County requires an employee to submit to a "reasonable suspicion" drug or alcohol test, the County shall place the employee on paid Administrative Leave pending the final test results.

27.4.1 The County shall bear the cost of the initial drug or alcohol test. The employee shall bear the cost of a test of the split sample. The County shall reimburse the employee for the cost of the test of the split sample in the event the result of the test is negative.

27.4.2 Any employee who refuses to appear for drug or alcohol test shall immediately be removed from assignment and shall be terminated.

27.5 Random Testing. Due to the safety sensitive nature of their positions all employees shall be subject to random testing. The selection of employees shall be made by a computer based random number generator from a pool of all bargaining unit employees.

- 27.5.1 The dates for administering unannounced testing of randomly-selected employees shall be spread reasonably throughout the calendar year; and
- 27.5.2 The number of employees randomly selected for drug/alcohol testing during the calendar year shall be a minimum of twenty percent (20%) and a maximum of fifty percent (50%) of the total number of employees in the pool.
- 27.6 An employee who receives a verified positive test result as the result of a reasonable suspicion, post-accident or random drug or alcohol test shall be dismissed.
- 27.7 Supervisors will receive a minimum of sixty (60) minutes of drug and alcohol specialized training. Non-supervisory employees will receive a minimum of sixty minutes training on the effects and consequences of prohibited drug and/or alcohol use.
- 27.8 Prior to conducting any testing under this Article, the County shall prepare and implement a Drug and Alcohol Testing Program to be distributed to employees and supervisors, and all employees and supervisors shall receive training on the Program. The County shall provide drafts of the Program to the Union President for review and comment during the drafting of the Program. The County shall also provide the final Program to the President of the Association for review and comment.

ARTICLE 28 TELEPHONES

- 28.1 Employees shall maintain a means of communication i.e. cell phone or telephones at their residences, and shall submit changes of their phone numbers or addresses into the departments scheduling system and report the changes to their immediate supervisor and to the Human Resource Department within two (2) working days after such changes. Home telephone numbers and addresses are confidential, and shall not be released to anyone outside of the County without express approval from the concerned employee.
- 28.2 The County may release telephone numbers to law enforcement personnel for valid purposes in the furtherance of criminal justice interests.

ARTICLE 29 OUTSIDE EMPLOYMENT

- 29.1 An employee may engage in outside business activity or outside employment provided it is not inconsistent, incompatible, and does not conflict and does not interfere, with the proper discharge of the employee's duties and responsibilities as a County employee.
- 29.2 Approval for outside business activity or employment shall be secured from the Chief or his designee and the Human Resources Department Director prior to initiating such activity or employment.

ARTICLE 30 PHYSICAL FITNESS AND PHYSICAL EXAMINATIONS

- 30.1 All medical and physical examinations required of employees by the County shall be paid for by the County. The results of the examination will be evaluated against the criteria of whether the person could perform the particular required duties without hazard to himself or others.
- 30.2 Employees may be required to pass a physical examination at any time to insure continued fitness for duty. All time spent taking the physical examination shall be paid at the employee's regular rate and shall not be considered hours worked for purposes of overtime.
- 30.3 Employees who fail the New Mexico Occupational Safety and Health regulation examination shall be allowed to use up to three (3) months of accumulated sick leave if necessary. During this time, the employee shall be allowed to seek an outside second opinion regarding the examination (at the employee's expense), if the second opinion results differ from the first the employee shall request a reevaluation of the first examination, in the event the opinions still differ the County and the employee will seek a thirds party physician qualified in OSHA examinations, at an equally shared expense, for a final decision. During this time the Employee shall be encouraged to enroll in a rehabilitation/fitness program designed to facilitate progress in attaining a level of fitness commensurate with the individual's assigned functions and activities. If at the end of the period (three months or exhaustion of the employee's sick leave, which ever occurs first) the employee is still unable to meet the required physical standards, the County shall provide the employee an opportunity to transfer to a vacant position within the County provided the employee possess the minimum requirements for the vacant position.

ARTICLE 31 LIABILITY PROTECTION

- 31.1 Should an employee be sued in a civil action for any allegations arising out of the course and scope of the employee's employment, the County shall defend and indemnify that employee pursuant to the requirements of the New Mexico Tort's Claims Act, Section 41-4-1 et seq., NMSA 1978, as amended. However, the County shall not be obligated to defend and indemnify an employee if a court of competent jurisdiction determines that the employee acted outside of the course and scope of his employment.
- 31.2 It is understood by the parties that it is against public policy to defend an employee in a criminal suit once the employee is indicted for a criminal act.
- 31.3 For purposes of this Agreement, the phrase "course and scope of employment" means the lawful acts which an employee is requested, required, or authorized to perform by the Department.
- 31.4 Nothing herein shall bar the use of case law and common law in the resolution of a dispute arising out of the interpretation of the New Mexico Tort's Claims Act, §41-4-1 et seq., NMSA 1978.
- 31.5 Issues regarding insurance coverage and the duty to defend and/or indemnify are not grievable or arbitrable.

ARTICLE 32 LABOR-MANAGEMENT RELATIONS/SAFETY COMMITTEE

- 32.1 The Labor-Management Relations Committee shall be composed of three (3) County representatives and three (3) Union representatives.
- 32.2 The Committee shall meet on the request of either party or at least once monthly (during the first week of each month) to discuss all matters of safety and mutual concern.
- 32.3 A Party wishing to convene the Labor-Management Relations Committee shall provide written notice to the Chief of the Department or the County Chapter President. The written notice shall identify the specific Article or provision of the Agreement or safety issue to be addressed. Committee members shall meet and confer within fourteen (14) calendar days of receipt of the written notice.
- 32.4 No grievance over an issue of contract interpretation shall proceed to arbitration until after first presenting the matter to the Labor-Management Relations Committee for review and possible resolution.
- 32.5 The Committee will perform and publish a Job Hazard Analysis.

ARTICLE 33 LIVING QUARTERS/LINENS/KITCHEN FACILITIES

- 33.1 The Department shall make beds available, including a frame, box spring and mattress, for all employees required to work more than twelve (12) consecutive hours.
- 33.2 Employees regularly scheduled to work more than twelve (12) consecutive hours shall be provided with linens. The County may elect to utilize a linen service or may chose to provide laundry facilities and supplies in lieu of linen service. The Union recognizes that should the County make available laundry facilities, employees are not to utilize such facilities for the cleaning of personal or family clothing.
- 33.3 The County shall make available kitchen appliances as well as cooking and dining utensils as deemed appropriate by the Chief of Fire and Rescue.

ARTICLE 34 ISSUED EQUIPMENT

- 34.1 The County agrees to furnish all required equipment set forth under the Fire Department's policy and procedure. A list of such items shall be kept current in the Department policy and procedure. The Fire Chief shall make changes to the policy and procedure consistent with the Safety Committee recommendations, as established in this agreement.
- 34.2 The employee shall be responsible for normal care and maintenance of all issued equipment.
- 34.3 An employee leaving the service of the County whether through resignation, retirement, layoff or discharge is responsible for returning any County property that he/she may have in his possession. Failure to return County property, which includes all protective clothing, badges, identification card, may result in the employee's final check being held up, with deduction being made for the value of the property.
- 34.4 The County shall reimburse employees for damage or loss due to theft, while on duty, of corrective eyeglasses, contact lenses and safety glasses. In order to obtain reimbursement, a copy of an accident report or police report filed with the B.C.S.O. must be submitted along with three (3) quotes for items similar to the ones damaged or stolen. The employee must receive authorization prior to purchasing items.

ARTICLE 35 TRAVEL DUE TO REASSIGNMENT

- 35.1 Employees who are temporarily assigned to a location other than their duty station after reporting for work shall travel to the new work station in a paid status in a departmental vehicle or be compensated for their use of their personal vehicle per mile according to County rules for reimbursement for use of personal owned vehicles in the event the employee travels more than ten (10) miles in a calendar month as a result of such assignment.
- 35.2 The employee is responsible for presenting themselves ready and able to perform at the temporary duty station as assigned.

ARTICLE 36 COMPENSATION

36.1 Definitions:

36.1.1 Base hourly Rate: Rate of pay NOT inclusive of longevity

36.1.2 Regular Hourly Rate: Rate of pay inclusive of longevity

36.2 Effective upon ratification and approval, employees shall receive an increase of 4% to their base hourly rate.

36.2.1 Employee shall be compensated at their Regular hourly rate unless specified otherwise.

36.3 **Longevity pay:** Employees with three (3) or more consecutive years of service in the Department, as of July 1 of each new fiscal year shall receive 1.5 percent above the base rate for each full year of service the employee has in the Department, as of July 1, to a maximum of 30 percent above the base rate at twenty (20) or more full years of service.

36.4 **Tool Allowance:** Effective upon ratification and approval, Fire Mechanics and Fire Mechanic/Shop Foreman shall receive a Tool Allowance of \$200.00.

ARTICLE 37 PARTIAL INVALIDITY, SEPARABILITY AND WAIVER

- 37.1 This Agreement shall be effective upon ratification and approval and is to remain in effect until a new agreement has been ratified by both parties.
- 37.2 Should neither party to this Agreement request the opening of negotiations at least one hundred and twenty (120) days prior to June 30, 2005, this Agreement shall continue in full force and effect from year to year thereafter.
- 37.3 Should applicable law or circumstances render invalid, unenforceable or no longer appropriate any provision of this Agreement, the parties shall meet and attempt to negotiate a replacement for the affected provision, as well as any other provision whose interpretation or implementation is dependent or contingent thereon. Such replacement provisions shall become effective immediately upon ratification according to the respective procedures and regulations of the parties, and shall remain in effect for the duration of the Agreement.
- 37.4 In the event that a Department policy conflicts with, or makes ambiguous, any provision of this Agreement, the parties may meet to negotiate a Memorandum of Understanding with respect to the affected provision, as well as any other provision whose interpretation or implementation is dependent or contingent thereon. Such Memorandum of Understanding shall be executed by appropriate representatives of the parties and shall remain in effect for the duration of the Agreement.
- 37.5 In the event that any of the provisions of this Agreement shall become invalid or unenforceable, such invalidity or be shall not affect the remaining provisions thereof.
- 37.6 This Agreement specifically describes the entire Agreement between the parties. Any State and/or Federal statutes enacted shall take precedence over Department Standard Operating Procedures (S.O.P.) and this Agreement. Provided, this Agreement shall take precedence over any conflicting Department Policies or S.O.P.s.
- 37.7 This Agreement is the only Agreement between the parties and supersedes any and all previous agreements and understandings.
- 37.8 The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from collective bargaining, and the agreements arrived at by the parties after the exercise of that right and opportunity and are set forth in Agreement. Therefore, the County and the Union, for the life of this Agreement, each voluntarily and unqualifiedly waives the right, and each agrees that they shall not be obligated to bargain collectively with respect to any subject or matter referred to, or covered in this Agreement, or with respect to any subject or matter not specifically referred to or covered in this Agreement, even though such subject or matter may not have been within the

knowledge or contemplation of either or both of the parties at the time they negotiated or signed this Agreement. Provided however, this provision shall not constitute a waiver of the right to grieve the effect upon the bargaining unit of matters otherwise excluded hereby.

37.9 **IN WITNESS WHEREOF**, the parties have executed this instrument by their duly authorized officers or representatives on the day and date first above written.

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL 244 **BOARD OF COUNTY COMMISSIONERS**

_____, President _____, CHAIR

_____, VICE-CHAIR

_____, MEMBER

_____, MEMBER

_____, MEMBER

APPROVED AS TO FORM:

County Legal Department

ATTEST:

Mary Herrera, County Clerk

Dated: _____

Appendix A

Firefighter
Paramedic/Firefighter
Fire mechanic
Deputy Fire Marshal
Fire Mechanic/Shop Foreman
Lieutenant Fire